

Id. When Blabey and Montana were testifying at the hearing, Martin came in to cover the office functions for WJUX. *Id.*

WJUX'S REMOTE CONTROL CAPABILITY

42. During his April 13, 1995, inspection of WJUX (the only inspection Loginow ever made of WJUX, Tr. 489), Loginow made inquiries regarding WJUX's remote control capability. Tr. 439-40, 459-60, *passim*. Blabey testified that Loginow asked him if there was a remote control "unit" for WJUX at the main studio and he answered no. Tr. 962. Loginow similarly testified that he asked Blabey whether there was any remote control "equipment" at WJUX's main studio. Tr. 577. Loginow's report of his April 13, 1995, inspection stated "There is no remote control equipment installed at the [WJUX] main studio to control the [WJUX] transmitter or to read transmitter operating parameters. The transmitter is controlled full time by personnel of Jukebox Radio in Dumont, New Jersey, by telephone line." Bur. Ex. 16, p. 254.

43. Blabey told Loginow that the WJUX transmitter could be remotely controlled from the Jukebox Radio Studio. Tr. 963. Loginow testified that before he inspected WJUX he understood that the station was unattended, in the sense that the transmitter was not controlled, but, after meeting with Blabey and Montana, concluded that WJUX was attended at the Jukebox Radio Studio in Dumont. Tr. 484-85. Turro testified that he told Loginow there was a remote control at the Jukebox Radio Studio, and that there was also a telephone dial-up remote control capability for WJUX. Tr. 1964. Loginow testified that Turro stated there was dial-up remote control at WJUX's main studio, but did not mention who knew how to operate it. Tr. 510-11, 541. Loginow testified that he asked Turro about remote

control and Turro responded that remote control, as well as meter readings, were handled at the Jukebox Radio Studio. Tr. 508-09, 541. He stated he took Turro's word, presuming that the remote control equipment (at Dumont) was functioning. Tr. 508-09. Loginow testified that, when Blabey told him there was no remote control equipment at WJUX's main studio, he was not interested in whether there was remote control capability at the Jukebox Radio Studio because he was only investigating whether WJUX's main studio had remote control capability. Tr. 538-39. Loginow did not, despite what he was told by Turro about telephone dial-up remote control capability at the WJUX main studio, make any inquiry of Blabey or Montana about telephone dial-up. Tr. 547. Moreover, Loginow asked Turro no follow-up questions about the telephone dial-up remote control system. Tr. 545-46.

44. Loginow first testified that a large portion of the complaint regarding WJUX centered on WJUX's transmitter not being controlled at WJUX's main studio, but later testified that there was no FCC rule prohibiting a station's transmitter being controlled from a point other than its main studio. Tr. 484-86.

45. Loginow testified that dial-up remote control is not adequate remote control for a station if it does not meet the guidelines -- one of which is a dedicated line -- but acknowledged that he does not know that there was no telephone circuit dedicated to remotely controlling the WJUX transmitter; he knows only what Blabey and Turro told him. Tr. 487, 514.

46. Montana testified that, at the time of the FCC inspection in April 1995, there was dial-up remote control for the WJUX transmitter from the WJUX main studio. Tr. 879. At the time of the inspection, she knew how to use the remote control. Tr. 879-80. One dials

the phone number, enters a code, and an automated voice responds. Tr. 879. She has on two occasions had instruction on how to use remote control. Tr. 852. Blabey testified that there is a telephone number posted at WJUX's main studio and WJUX's transmitter can be turned off by dialing the number and entering a code. Tr. 963. He stated that there are, similarly, other codes to turn the transmitter on, take readings, and do other functions required by FCC regulations. Tr. 966. Blabey said he knows the codes and how to use them, and can do it anywhere. *Id.* Blabey stated that at the time of the inspection there was a phone in the studio with four WVOX extensions on it and any of those could be used from the studio to dial the WJUX transmitter and control it. Tr. 968. Both Weis (MMBI Ex. 1, p. 5) and Herman Hurst (MMBI Ex. 2, pp. 1-2) testified that WJUX had remote control capability at its main studio when Loginow inspected the station.

WJUX MAIN STUDIO TELEPHONE

47. Blabey stated that, at the time of the inspection, WJUX did have a phone line into the office building in which the WJUX and WVOX studios were located, but that WJUX's phone line was not connected into WJUX's main studio room proper. Tr. 967-68. Blabey said he has since learned that phone calls to WJUX were forwarded to Jukebox Radio Network in Dumont, New Jersey. Tr. 968-69. Montana was not aware of a telephone on the WJUX premises for WJUX callers when WJUX went on the air and at that time Montana did not have a phone on her desk for WJUX's telephone line. Tr. 820-21. Montana did recall that there was a listing for WJUX (WXTM) in the May 1995 local telephone directory, the first to be published after WJUX began operations. Tr. 887-88.

48. Loginow, in seeking to locate WJUX, called directory assistance in Ferndale on April 13, 1995, and was given a telephone number for WJUX (then WXTM) and when he called the number, it was answered in Dumont. Tr. 481. When the call was answered in Dumont, Loginow was treated courteously and given directions to WJUX's main studio. Tr. 482. Similarly, Howard Warshaw testified that on January 30, 1995, he called directory assistance for area code 914 and was given the phone number for WJUX (WXTM). Upon dialing that number he ended up speaking with Gerry Turro, who gave him the location in Monticello of WJUX's public inspection file. Tr. 1067; Bur. Ex. 2, p. 48.

49. Montana testified that if somebody in the community wished to call WJUX, they found out that the WJUX studio was at the WVOS studio and they called on the WVOS line. Tr. 820-21. The calls she received were generally calls complimenting the music on WJUX and asking for requests to be played. Tr. 864-65. A telephone for WJUX was installed on Montana's desk in July of 1995. Tr. 861-62. There was, however, a telephone set connected to WJUX's local number before the date Montana recalls a phone set being placed on her desk. The NYNEX phone bill furnished to Mr. Goldstein by MMBI in July 1995, for the billing date of June 13, 1995, shows at least 23 outgoing calls on WJUX's number prior to June 13, 1995. Bur. Ex. 11, p. 211, under heading "Local Calls."

50. In Weis's direct written testimony, delivered over his declaration signed November 10, 1997, Weis testified that it appears to him that his July 27, 1995, response letter to the FCC's June 21, 1995, inquiry contained information about WJUX's local telephone service which may have created an understanding on the part of a reader which Weis now believes would have been erroneous. In his July 27, 1995, letter, Weis gave the local toll-free

telephone number for the WJUX (WXTM) main studio, which was the number listed by the local phone company, NYNEX, for WJUX (See Warshaw at Tr. 1067 and Bur. Ex. 2, p. 48). However, it appears that calls to that number had been forwarded uniformly to the Dumont, New Jersey, offices of Jukebox Radio. The telephone bills which Weis furnished to the FCC with his 1995 letter show that a large number of calls were forwarded to Dumont, New Jersey, and show a charge for monthly call forwarding service, in addition to individual toll charges (not billed to the callers) for each of the calls forwarded. MMBI Ex. 1, pp. 8-9.

51. When Weis signed his direct written testimony on November 10, 1997, he did not recall that he knew of the call forwarding arrangement at the time he answered the FCC's letter. All of the phone bills had been sent by NYNEX to Turro, and Weis does not recall how much detailed review he gave them before sending them to the FCC. However, the phone bills Weis sent to the FCC contain information indicating that all, or most, calls to the WJUX main studio number listed by NYNEX for WJUX would have been forwarded to Jukebox Radio. MMBI Ex. 1, p. 9, Bur. Ex. 11, pp. 189-214. When Weis learned that the bills for WJUX's phone service were being sent by NYNEX to Turro, the billing was changed and MMBI has paid all subsequent bills for WJUX telephone service. Since some point in mid-1995, all calls to the WJUX phone number listed by NYNEX (which was not changed) have been answered at the WJUX main studio. MMBI Ex. 7, pp. 3, 10.

52. On June 20, 1997, and on June 30, 1997, MMBI filed responses to the Mass Media Bureau's Request for Admissions, specifically to requests 28 and 64, to furnish what Weis then believed to be more accurate information about WJUX telephone service. Bureau Request 28 reads: "When WXTM(FM) began broadcast operations, the station maintained a

toll-free telephone line at the main studio for residents of Monticello.” Request 64 reads:

“After the FCC inspection, a dedicated phone line for WJUX (FM) was installed at the station's main studio in Liberty [sic], N.Y.” Bur. Ex. 23, pp. 5,9. In its response of June 20, 1997, MMBI replied to the Bureau's Requests as follows:

28. Beginning November 2, 1994, WXTM maintained a toll-free number for residents of Monticello. However, MMBI now believes that number was not answered, or answered exclusively, at the WXTM main studio.

64. Deny. Subsequent to the FCC inspection a call forwarding feature was deleted from the WJUX phone line.

Bur. Ex. 24, pp. 555, 557.

53. On June 30, 1997, MMBI amended its response to Bureau Requests 28 and 64 by Weis's June 30, 1997, declaration, as follows:

First, the response to Bureau Request No. 28 stated that MMBI now believes that number [a toll-free telephone number] was not answered, or answered exclusively, at the WXTM [now WJUX] main studio. I have now concluded that it is very likely that the telephone number was not, until July, 1995, answered there, and therefore I delete the phrase “or answered exclusively” from MMBI's response to Bureau Request No. 28.

Second, the response to Bureau Request No. 64 needs to be expanded. The expanded response is as follows:

Deny. Subsequent to the FCC inspection, it appears that a phone jack for this number was relocated within the building housing the WJUX main studio, a telephone (either a replacement for an existing instrument or a first telephone instrument for the number) was acquired and the practice of forwarding calls placed to the number was ended.

Bur. Ex. 25, p. 562.

54. At the hearing, Weis speculated that the NYNEX telephone bills were sent to Jukebox Radio, and ended up being paid by Jukebox Radio because Turro placed the order for WJUX's telephone service. When the station was being built, it was recognized that WJUX needed a telephone in the studio. Turro was working in the studio with his network equipment while Weis was at the tower site installing equipment, and Turro picked up the phone, called NYNEX, and ordered a telephone. Since WJUX had no account with NYNEX anywhere, Turro ordered it on Jukebox Radio's account since he had the information at his fingertips. Tr. 1437-38. At some point someone pointed out to Turro that he was paying Weis's phone bill and that's when the account got transferred back to Weis. *Id.* Weis never reimbursed Turro or Jukebox Radio for the phone bills they paid. *Id.*

55. Weis never tried to call the WJUX studio and ended up being forwarded to Dumont. Tr. 1441. If Weis needed to call and talk to Blabey or Montana, he called the WVOS number. *Id.* This is a continuation of his habit in dealing with Blabey from the very beginning. *Id.* Weis never tried to call the number listed in the directory for WJUX to see what would happen. Tr. 1441-42.

OTHER MAIN STUDIO FINDINGS

56. WJUX's public file is maintained at the Monticello Public Library. MMBI Ex. 1, p. 10; Tr. 889. There is also a copy of the public file at WJUX's main studio. *Id.*

57. Although in his report regarding the inspection Loginow stated there was no sign on the building to indicate it was WJUX's studio, Loginow agreed that there has never

been an FCC rule or policy that required a radio station to have a sign outside of its main studio. Tr. 483-84.

58. Loginow testified that, had this been a routine random inspection, not requested by a Bureau, he would have cited WJUX for the lack of remote control capability at the main studio, but not for any main studio rule violations. Tr. 525-27. He would not have mentioned a network agreement or an LMA. *Id.*

59. Weis heard nothing from the FCC to indicate that the inspector believed that he had found that WJUX's operations or facilities did not comply with requirements for FM radio stations until, over two years later, when the Order to Show Cause in this case was issued. MMBI Ex. 1, p. 3-4. He received a letter from the FCC dated June 21, 1995 (the Goldstein letter of inquiry), which made no reference to the inspection. *Id.* He also received a letter from the FCC dated April 5, 1996, which was signed by the Chief of the Mass Media Bureau, the same official who signed the Stewart Ruling. *Id.* In that letter, the official acknowledged that an inspection had been conducted and that MMBI had provided information in response to the June 21, 1995, letter but gave no indication that the operation of WJUX had been found to be in violation of any FCC rule pertinent to radio broadcasting stations. *Id.* Further, the letter permitted continuation of the arrangement between MMBI and Turro whereby Jukebox Radio provided programming and advertising to WJUX pursuant to the Affiliation Agreement, conditioned upon Turro ceasing rebroadcasting WJUX over translator stations he owned. *Id.*, Bur. Ex. 1, pp. 11-13.

ISSUE 6: CONTROL OF WJUX

60. MMBI has never engaged in an unauthorized transfer of control of WJUX to Turro or an affiliated entity, nor has MMBI abdicated control of WJUX to Turro or an affiliated entity. MMBI Ex. 1, p. 6. Turro does not now have and never has had any ownership interest in WJUX, nor any option to acquire any such interest whatsoever. *Id.* Weis has been in control of WJUX since acquiring its construction permit and remains in control. MMBI Ex. 1, p. 11.

THE AGREEMENT TO ACQUIRE THE WJUX CP

61. Turro first learned about the availability of WJUX's CP in a 1994 call from the initial permittee, Larry Fishman ("Fishman"), and later, in the Summer of 1994, brought the availability of the permit to Weis's attention. MMBI Ex. 1, p. 1; Tr. 1337, 1729-30, 1823, 2063, 2070, 2072-73. At a later meeting, Turro described to Weis the Stewart Ruling and may have given Weis a copy of the ruling. MMBI Ex. 1, p. 1; Tr. 1384-86, 1731, 124-25. Turro advised Weis about Turro's understanding of what the Stewart Ruling meant. Tr. 1824-25. Weis understood that the Stewart Ruling authorized a translator station licensee to furnish programming and advertising to an FM station and also rebroadcast the FM station on the translator. MMBI Ex. 1, p. 1; Tr. 1385-86.

62. Turro proposed that Weis acquire the WJUX CP and that Turro supply Weis with Jukebox Radio programming and commercial advertising for the station. Tr. 1339-40. The arrangement Turro offered to enter into with Weis if Weis acquired the permit was within the terms of what Weis understood was authorized in the Stewart Ruling. MMBI Ex. 1, pp. 1-2; Tr. 1338.

63. Weis reached an agreement with Fishman to acquire the CP for \$120,000. MMBI Ex. 1, p. 2; Tr. 1342. Weis decided to go ahead with the CP acquisition and the arrangement proposed by Turro because it appeared on Weis's analysis to be a good business opportunity that had been specifically approved in advance by the Chief of the FCC's Mass Media Bureau. MMBI Ex. 1, p. 2; Tr. 1345-46. Weis testified that without the Agreement with Turro, and the payments MMBI would receive under that Agreement, he would not have built WJUX. Tr. 1409-10.

THE NETWORK AFFILIATION AGREEMENT

64. On October 17, 1994, MMBI signed a Network Affiliation Agreement ("Affiliation Agreement") with BCCBF (Bur. Ex. 11, pp. 216-17), which Weis believes was consistent with the Stewart Ruling. MMBI Ex. 1, p. 2; Tr. 1347, 1392.

65. The Affiliation Agreement provides for monthly payments to MMBI by the network, the amount of which Weis arrived at by preparing a business plan designed to cover capital costs and operating expenses and produce a profit. Tr. 1354-56, 1391. Turro stated he agreed to make the monthly payments in the amounts specified by Weis because it made business sense to him and the network. Tr. 2100. Weis understood that Jukebox Radio network would provide programming 24 hours a day, station identifications, public affairs programming, emergency broadcast system tests, and commercial time. Tr. 1352-53.

66. The Affiliation Agreement was entered into between MMBI and BCCBF but on January 1, 1995, MMBI began dealing with FM 103.1, Inc. d/b/a Jukebox Radio. Tr. 1942-43. Payments to MMBI now come from FM 103.1, Inc. Tr. 1350. Turro is the sole shareholder of FM 103.1, Inc. Turro Ex. 1, p. 1.

67. Weis said MMBI has received a check every month in accordance with the Affiliation Agreement, and there has not been a month when MMBI's expenses exceeded the monthly payment, including amortization of equipment and other accounting expenses. Tr. 1349, 1392, 1434-35. In addition, MMBI was paid \$40,000 by BCCBF as an incentive for entering into the Affiliation Agreement. Tr. 1347. As regards the \$40,000 inducement to Weis to enter into the Affiliation Agreement, Turro testified that he does not know how the figure was determined, but that Weis presented the figure and he accepted it. Tr. 1828-29, 1837. Turro also testified that Weis did not have to repay the \$40,000 to Turro. Tr. 1831-32.

68. The Affiliation Agreement contains a provision under which "Network agrees to indemnify MMBI" against FCC forfeitures. Bur. Ex. 11. p. 216. Weis stated that, pursuant to the Affiliation Agreement, if MMBI is fined by the FCC for something the network did, Weis would advise Turro that the network is responsible for reimbursing and indemnifying MMBI and, if Turro refused, MMBI would sue the network. Tr. 1448-49. On the other hand, if MMBI was assessed a forfeiture by the FCC for something MMBI did, such as a main studio rule violation, the network would not reimburse MMBI. Tr. 1364. Similarly, Turro testified that the indemnification provision in the Affiliation Agreement means that if Jukebox Radio provides programming broadcast by WJUX which violates FCC regulations, the network would be responsible to MMBI for any forfeiture. Tr. 1840-41. Turro stated the indemnification is limited to programming and neither Turro nor the network would be responsible if MMBI was assessed a fine for, for example, operating the transmitter above its authorized power. Tr. 1840-42.

69. There is an amendment to the Affiliation Agreement dated November 1994 ("Amendment") which was retroactive to the execution of the Affiliation Agreement. Bur. Ex. 11, pp. 219-20; Tr. 1370. Weis stated that he and Turro agreed to the Amendment in November 1994 but did not get around to signing it until July 17, 1995. *Id.*; MMBI Ex. 1, p. 2. Weis stated the Amendment had no connection to the FCC inspection. *Id.* Weis said the Affiliation Agreement was amended as a result of the advice of counsel. MMBI Ex. 1, p. 2; Tr. 1423. He said it was suggested and prepared by Koteen and Naftalin. Tr. 1370-73. Turro also testified that the Amendment was not in any way related to the FCC inspection. Tr. 1945. Turro stated it reflects the understanding that he and Weis had reached on counsel's advice in November 1994, was prepared in November 1994, and sat on Turro's desk. Tr. 1945-46, 2094. Turro testified that BCCBF is a signatory to and referred to in the Amendment even though it no longer was involved when the amendment was executed because the Amendment was to have been signed in November 1994. Tr. 1943-45.

70. Weis said the purpose of the Amendment was to provide "better definition" to what was included in the Affiliation Agreement. Tr. 1379. Weis testified that it was his opinion that the original Affiliation Agreement was in compliance with FCC policy. Tr. 1420. The Affiliation Agreement as signed October 17, 1994, states that "The parties agree to abide by all applicable FCC Rules and regulations." Bur. Ex. 11, p. 217. Turro testified that the difference between the Affiliation Agreement and Amendment is that the Amendment clarifies Weis's responsibilities as the licensee. Tr. 1947. It, for example, specifies that MMBI is responsible for ascertaining the needs of its community and service area, that MMBI has the right to broadcast programming other than network programming to meet those needs, and

that MMBI has the right to delete and preempt network programming. It also specifies that MMBI is responsible for adhering to FCC requirements. Bur. Ex. 11, pp. 219-20.

71. Turro testified that, at some point, Weis sought an increase in the monthly payments for the Affiliation Agreement of roughly \$100 a month. Tr. 2100. Weis also testified to having sought, and obtained, this increase to cover additional capital investment, for a standby generator and auxiliary transmitter. Tr. 1366-68.⁴ Turro stated that he agreed to the increase because Weis was going to install a generator at the WJUX transmitter site which would protect the network equipment there. Tr. 2100-01, 2116. Turro stated the network was willing to pay the increase because it received a reasonable value in return. Tr. 2100-01.

72. At the time the Affiliation Agreement was executed, Turro executed a personal guarantee. MMBI Ex. 5; Tr. 1381, 1392. Weis testified that it was his idea and that he suggested it because of the possibility that Turro's operation could go out of business. *Id.*; Tr. 1382-83, 1392. Weis said he did not have assistance from counsel in preparing it but copied it from an existing item in his files. *Id.* Weis stated that it constitutes Turro's personal guarantee of full and prompt payment by the network for the full term of the Affiliation Agreement and, if MMBI does not receive its scheduled monthly payment and cannot collect it from the network, MMBI could initiate a lawsuit against Turro to obtain the money. Tr. 1381-2, 1431-33, 1447-48. Weis testified that the amount of the guarantee was related to his

⁴When pressed for a guess, Weis guessed that the payment increase was \$1,000-\$2,000 per month. Tr. 1369. As this amount appears high for the convenience of having a used auxiliary transmitter and standby generator in place, it is more likely that the \$100 per month increase testified to by Turro is the accurate figure.

business plan. Tr. 1382-83. Turro testified that if the network defaults in its monthly payments or goes bankrupt, he is ultimately responsible for the payments. Tr. 1842, 1846.

73. "Agreement" is the key word Weis saw in the Stewart Ruling, and he believed that the word covered whatever arrangement he might have with Turro. Tr. 1387-89. Weis acknowledged that he does not know the distinction between a time brokerage agreement and a network affiliation agreement. Tr. 1388-89. While Weis agrees the Stewart Ruling authorizes a translator station to act as a time broker and does not discuss a network affiliation agreement, Weis believes he would constitute a time broker with a network affiliation agreement. Tr. 1389-91.⁵ Weis understood that BCCBF was a broadcast network. Tr. 1349. At the time WJUX became an affiliate, it was Weis's understanding that there would be other affiliates. Tr. 1432-33.

THE ACQUISITION OF THE CP, CONSTRUCTION AND COMMENCEMENT OF OPERATION

74. When MMBI acquired the WJUX permit on October 18, 1994, Weis paid Fishman \$40,000 and gave him a note, on which MMBI was the sole maker and sole obligated party, for the remaining \$80,000. MMBI Ex. 1, p. 2; MMBI Ex. 5, p. 19; Tr. 1347, 1392. In addition, MMBI assumed Fishman's tower lease with MBC and agreed to indemnify Fishman against any claims arising from Fishman's guaranty under the lease. MMBI Ex. 1, p. 2; MMBI Ex. 5, p. 21. There was no other indemnitor. *Id.* MMBI then entered into a tower lease with MBC, which Weis alone personally guaranteed. *Id.*; MMBI Ex. 5, p. 10. MMBI also entered

⁵In the HDO, the Commission found it "not unreasonable" to contend that the Stewart Ruling authorized the relationship between BCCBF and MMBI. HDO, n. 13.

into a lease with MBC for studio and office space in Ferndale, New York, in a building which housed the studios and offices for WVOS(AM) and WVOS-FM, Liberty, New York (together "WVOS"), stations licensed to MBC. *Id.* Weis also alone personally guaranteed that lease. *Id.*; MMBI Ex. 5, p. 14. The \$40,000 that MMBI received as an inducement to sign the Affiliation Agreement was deposited into MMBI's checking account and co-mingled with other funds already in the account. Tr. 1426. The \$40,000 payment made to Fishman was drawn from MMBI's account. *Id.*

75. Eugene Blabey ("Blabey"), whom Weis engaged as WJUX's general manager, is an owner of MBC and acts as general manager of WVOS. Blabey first met Weis about the time Weis acquired WJUX. Tr. 940-41. Weis came to Blabey's office and said he was acquiring the CP from Fishman; their first conversation revolved around whether or not Weis would assume the WJUX tower lease that Blabey had previously negotiated with Fishman. *Id.* Blabey and Weis negotiated Weis's assumption of WJUX's tower lease and negotiated a separate studio lease. *Id.* Turro was present during some meetings between Blabey and Weis, and not present at others. Tr. 941-42, 990, 1001. Turro was introduced to Blabey as Weis's chief engineer. Tr. 941. During one of the earlier discussions with Weis, the possibility of Blabey acting as general manager for WJUX arose, perhaps at Blabey's suggestion. Tr. 942-43. Blabey believed that being the general manager of WJUX would work as he was already performing many functions of a general manager for WVOS and it would not be overly burdensome to him. Tr. 946-47. At a later meeting, Blabey was told that WJUX's programming would be coming from New Jersey, and that WJUX would be rebroadcast by a translator. *Id.* Blabey understood that Jukebox Radio Network would sell commercial time

on WJUX, and that those commercial spots would be primarily directed to Bergen County, New Jersey. However, Blabey received no assurance that time sales would not be made in Sullivan County. Tr. 991-92.

76. On October 21, 1994, three days after Weis purchased the WJUX permit, the station went on the air. MMBI Ex. 1, p. 2; Tr. 1392-93. Weis said all of the equipment was on order or on standby and the station was built in two days. Tr. 1392-93. He said that construction of radio stations is his business. *Id.* Weis stated he wanted the station to be completed so quickly because winter was coming and because the sooner the station was on the air, the sooner he would begin receiving money under the Affiliation Agreement. Tr. 1392-94. Weis said Turro also said he wanted to get the station on the air. *Id.*

77. Turro's primary role during the construction of WJUX was to himself install his network equipment and test that everything worked. Tr. 1394, 1794-96, 2017. Weis also said that, as Turro was the chief operator of WJUX at that point, he took an interest in what Weis and Weis's crew were doing with the transmitter, electrical wiring, and remote control. *Id.* Turro testified that when Weis decided to purchase WJUX, Turro was providing technical advice and a decision was made that Turro would be the chief operator and provide technical support. Tr. 1792. Turro stated that he assisted Weis in a general sort of way but did not build WJUX's facilities. Tr. 2016. Turro said that Weis and the people that work for him are capable of constructing radio stations and he helped Weis by supervising. Tr. 1793. Turro personally inspected the WJUX main studio equipment and verified it was working. Tr. 1794-95. Turro said Weis was present throughout the construction process, directing Weis's construction crew from Weis's company. *Id.*

78. Weis stated that, in October 1994, about two weeks before WJUX went on the air, a discussion came up about the need for him to divest his interest in the Pomona Translator. Tr. 1399. Weis understands, from his general knowledge, that as the owner of WJUX he could not own a translator station outside of WJUX's 1 mV/m contour and rebroadcast WJUX on it. Tr. 1401. On January 10, 1995, Weis transferred his ownership interest in the Pomona Translator to Turro pursuant to FCC approval. Tr. 1402.

79. On April 14, 1995, WJUX changed its call letters from WXTM to WJUX. Tr. 1403. Weis stated that he instructed Koteen and Naftalin to apply for the call sign change on his behalf, knowing that Turro was turning in the call sign. Tr. 1403-04. Weis understood it to be important to Turro that WJUX get the call letters WJUX. Tr. 1405.

CONTROL OF FINANCES

80. Weis has exercised financial control over WJUX and been responsible for the obligations of MMBI and WJUX, and no one else has. MMBI Ex. 1, p. 6. Turro, and entities affiliated with Turro, have never guaranteed any debt incurred by MMBI or MMBI's performance of any contract or lease entered into by MMBI. *Id.* MMBI made all payments due Fishman under the note for the remaining portion of the purchase price for WJUX's construction permit. MMBI Ex. 1, p. 2. MMBI has made the lease payments for its transmitter site and main studio. MMBI Ex. 1, p. 3. MMBI has paid all of the compensation to persons MMBI has employed in the operation of WJUX. MMBI has paid all bills for services, products and utilities used in the operation of WJUX, with the single exception of bills for telephone service from October 1994 to mid-1995, when those bills were sent by NYNEX to Jukebox Radio. *Id.* MMBI has paid all subsequent bills for WJUX telephone

service. *Id.* Neither Turro, Jukebox Radio, BCCBF, or FM 103.1, Inc. paid for any of the costs of constructing WJUX. Tr. 2081-82. Turro has not paid and is not obligated to pay Weis's legal expenses. Tr. 1958-59.

81. Weis has ultimate financial responsibility for WJUX. Tr. 1449. Weis has written the checks to build the station, pay the staff, and pay the operating expenses. Tr. 1358. Weis signed a personal guarantee when MMBI assumed Fishman's transmitter lease. Tr. 1443. If Jukebox Radio misses a monthly payment to MMBI, MMBI still has to pay WJUX's lease payments and other bills. Tr. 1450. If MMBI stops receiving payments from the network, MMBI can terminate the Affiliation Agreement and sue Turro, but while MMBI is suing Turro, Weis would put his own money into MMBI to pay the bills. Tr. 1450, 1451-53. If MMBI never recovered anything from Turro, MMBI's obligations would remain in place, Weis would have lost money, and Weis would still have to meet the obligations. *Id.*

82. Blabey does not have final financial authority over MMBI or sign MMBI paychecks. Tr. 937. Blabey sends or faxes to Weis in New Jersey matters that need Weis's attention; these generally involve financial matters. Tr. 915. Montana does not handle finances for WJUX. Tr. 853. She brings bills to the attention of Blabey and Weis for payment and handles petty cash. Tr. 819-20.

CONTROL OF PERSONNEL

83. Weis has exercised responsibility over the personnel of WJUX, including engaging Blabey and, at Blabey's recommendation, Montana and Spicka. MMBI Ex. 1, pp. 6-7. Weis also directly engaged Alan Kirschner, the WJUX Chief Operator. *Id.* Blabey

characterizes his role in hiring and firing at WJUX as recommending employees for Weis to place on the payroll. Tr. 937.

84. Blabey met Weis about the time Weis acquired WJUX. Tr. 940-41. Blabey had a number of meetings with Weis before he decided to accept the job as WJUX's general manager. Tr. 990. Turro, who came to some of the meetings with Weis, was introduced to Blabey as Weis's chief engineer. Tr. 990, 1001. During one of Blabey's earlier discussions with Weis, the possibility of Blabey acting as general manager for WJUX arose. Tr. 942. Blabey may have suggested the possibility. Tr. 943. Blabey then had several meetings with Weis concerning taking on a general manager role or any role at WJUX. Tr. 946. Weis agreed to pay Blabey \$100 per week to act as general manager and that amount has not changed. Tr. 1395. Blabey later entered into an agreement with Weis with respect to ad sales for WJUX in addition to his general manager duties. *Id.*; MMBI Ex. 8; Tr. 1002.

85. Blabey does not perform all of the same duties for WJUX that he does for WVOS because he is also an owner of WVOS and has the ultimate financial authority for WVOS but not such for WJUX. Tr. 929. As an owner of WVOS, he handles license renewals, EEO reports, and other paperwork for the FCC for WVOS. *Id.* He does not do any of that for WJUX as Weis does it all. *Id.* Blabey has no daily contact with Jukebox Radio, although there are occasions on which he is in touch with it. Tr. 915. Blabey thinks he has called Jukebox Radio in Dumont to report outages and Montana has done so. Tr. 978.

86. Montana learned about the opportunity of a position at WJUX from Blabey. Tr. 816-17. Blabey introduced Montana to Weis sometime prior to October 1994 and she discussed the WJUX job with Weis at that time. Tr. 818. Montana considers herself to be an

employee of WJUX. Tr. 823. In October 1994, when she was hired, she entered into a letter of agreement with Weis regarding her employment, effective the first date of broadcasting. Bur. Ex. 12; Tr. 823, 837. It was undated because she copied Blabey's letter agreement, inserted her name, and forgot to date it. Tr. 838. Her starting salary at WJUX was \$100.00 per month. Tr. 816-17. At one point Montana received a raise, which was recommended by Blabey. Tr. 1440-41.

87. Blabey supervises Montana's work for WJUX and she consults with him on WJUX matters. Tr. 838, 950. Montana stated that at WJUX she first reports to Blabey, who is the General Manager, and then ultimately to Weis, who is the owner. Tr. 818. Blabey is Montana's immediate supervisor and Weis is her ultimate superior. Tr. 893. Blabey is the person who could give her directions regarding WJUX programming and has directed her to send a bulletin board of PSA's to the network. Tr. 893-94. She meets with Weis on WJUX business on an as needed basis. *Id.* Weis, Blabey's immediate supervisor, is the one who could give Blabey directions. Tr. 893-94. Montana knows Turro and met him approximately the same time she met Weis. Tr. 818. During the first few months of operation, she saw Turro at the station, but doesn't recall how often. Tr. 819. Turro spoke with her, but she doesn't recall any of the conversations. *Id.*

CONTROL OF PROGRAMMING

88. Weis has exercised control over the programming of WJUX. MMBI Ex. 1, p. 7. At the time he acquired the WJUX permit and agreed to enter into the Affiliation Agreement with Turro's company, he knew that Jukebox Radio would provide an entertainment service of popular musical standards, including music of the big band era, which would appeal to a

large segment of the Sullivan County population. *Id.* In addition, he directed at the very commencement of WJUX operations that WJUX carry public service and public affairs programming aimed at serving Monticello and Sullivan County. *Id.*; Tr. 1439-40, 1442.

89. To accomplish the broadcasting of public affairs and public service programming, Weis arranged to have public affairs programs produced by Blabey and aired on WVOs rebroadcast over WJUX on different days and at different times than they are broadcast over WVOs. MMBI Ex. 1. p. 7-8. In that way, those programs have the opportunity to be heard by a different audience in Sullivan County than originally hears them. *Id.* Weis also arranged for the broadcast of public service announcements of interest to Monticello and Sullivan County. *Id.* Montana is in charge of gathering material for public service announcements and arranging for such announcements to be broadcast over WJUX. *Id.* Turro stated that when Weis and Blabey arranged to have public affairs programming provided for broadcast on WJUX, he made a decision for the network to carry that programming on the network. Tr. 2098

90. Weis arranged to have Blabey's productions of public affairs and public service programs. Tr. 1438-39. The way that Weis arranged this was that by having discussions with Blabey on getting it done, how they would do it, and when the programming would be aired. *Id.* Weis doesn't believe that Turro was a party to these discussions initially. *Id.* Weis does not pay Blabey for these programs because Blabey has never asked for payment. Tr. 1439. As regards arranging for the broadcast of PSA's, it was a very similar discussion, maybe even simultaneous with the one regarding public affairs programming. *Id.* They discussed that they needed public service announcements and needed Montana to obtain them. *Id.* Montana

obtains them and sends them to Jukebox Radio. *Id.* Preparing the PSAs was part of Montana's original job at the station. Tr. 1442-43.

91. Weis and Blabey talked about how they would handle WJUX's advertising. Tr. 922. Blabey and Weis thought there was possible synergy in jointly selling WJUX's and WVOS's different audience segments. *Id.* Blabey still thinks that at some point an advertiser will have an interest in WJUX's demographic group and buy joint spots on both stations. *Id.* WJUX has a local rate card, for buying ads on WJUX as opposed to Jukebox Radio. Bur. Ex. 39; Tr. 923. Blabey did not prepare the rate card and believes Weis did so. Tr. 924. In September 1995, Blabey issued a statement advising that WJUX was not accepting political orders until further notice. MMBI Ex. 35, p. 699; Tr. 927. Weis made the decision regarding this and told Blabey to follow through on it. Tr. 927. Blabey advised Weis that WJUX would have to accept advertising for a federal election, but there was no federal election at the time. Tr. 928. The policy of not selling political time was recently changed by Weis. *Id.*

92. Although Blabey understood that Jukebox Radio Network would have Bergen County as its primary source of advertising revenue, he was never told that Jukebox Radio would not sell advertising time in Sullivan County. Tr. 991-92, 1018. Very early on, in approximately January 1995, Jukebox Radio hired Georgia Fleenor, a sales representative who had formerly worked for Blabey at WVOS, and placed her in Sullivan County as its own salesperson to sell ad time there. Tr. 992-93, 2102-03. Jukebox Radio subsequently replaced her with another salesperson, Stan Feinblatt, who currently has an office in Sullivan County and sells network advertising time to Sullivan County advertisers. Tr. 992-93, 2103.

93. Turro said that when Montana sends to the Jukebox Radio Studio a list of public service announcements or he receives public affairs programming from WJUX that has been produced by Blabey, the network has complete discretion to reject that programming. Tr. 2095. He also said that if the network were to exercise this discretion, WJUX would have the right to delete network programming and put the public service announcements and public affairs programming on the air directly at WJUX. Tr. 2096-97.

ISSUE 7: MISREPRESENTATION--LACK OF CANDOR

94. Prior to designation of this case and this issue for hearing, MMBI and Weis had on only one occasion made representations to the Commission germane to matters at issue in this case. On July 27, 1995, MMBI, by Weis, responded to the FCC's Goldstein inquiry letter of June 21, 1995. (Bur. Exs. 11 and 10, respectively.)

95. MMBI and Weis have acknowledged that the response given in the July 27, 1995, letter to the FCC's June 21, 1995, inquiry about WJUX telephone service at the WJUX main studio was such that it would cause an erroneous understanding. MMBI Ex. 1, pp. 8-9. Weis testified in his direct statement that he knows that he did not think his answer to Goldstein's inquiry was inaccurate when he gave the answer. *Id.* at p. 10. He also testified that he had not knowingly misrepresented facts, or lacked candor, in his representations to the Commission concerning the operation of WJUX(FM). *Id.* at p. 11.

96. In preparing responses to pre-hearing discovery requests of the Bureau, MMBI and Weis concluded that the 1995 response to Goldstein's inquiry letter was inaccurate, and set out to provide what MMBI now believed to be accurate information. MMBI Ex. 1, p. 10. It did so, first, in its June 20, 1997, Response to the Bureau's "First Request for Admissions".

Bur. Ex. 24, pp. 555 (Response 28) and 557 (Response 64). It did so again shortly thereafter when, on June 30, 1997, MMBI amended its Response to the Bureau's "First Request for Admissions" as to Responses 28 and 64, because Weis had by then concluded that the June 20 responses, which he believed true when made, should be revised. Bur. Ex. 25, p. 562.

97. At hearing Weis appears to have said in response to a question that he may have become aware of calls being forwarded from WJUX to the Jukebox Radio studio in May or June of 1995. Tr. 1445. No follow-up questions were asked of Weis to test the accuracy of Weis's recollection of the date of his awareness, nor to determine the degree of his awareness or the nature of what he may then have understood about call forwarding.

98. Record evidence on the question of telephone service to WJUX's studio is set forth at P.F. 47-55. In addition to those proposed findings, the following findings relate to the telephone service component of Issue 7. Montana's position at WJUX was first described to her as being to "staff the office and to answer phones" Tr. 817. Her 1994 pay checks from MMBI, signed by Weis, were for services described as "consult & phone." Bur. Ex. 12, 225. The telephone bills attached to MMBI's July 27, 1995, response to Goldstein's inquiry letter show installation changes on November 2, 1994, including a "modular jack." Bur. Ex. 11, p. 190.

99. The HDO contains allegations that representations, other than with respect to telephone service, made by MMBI and Weis to the Commission were not correct. See, e.g., HDO, par. 15. The record contains evidence on such allegations and proposed findings of fact are included above under Issues 5 and 6. Weis has fully reviewed his letter to the FCC and does not see any representation other than that with respect to telephone service for WJUX

that was inaccurate or likely to have been misunderstood about a point material to any issue in this case. MMBI Ex. 1, p. 10.

III. CONCLUSIONS OF LAW

1. “In this revocation proceeding, the Bureau has the burden of establishing by a preponderance of the evidence that serious misconduct occurred.^[*] Thus, it is not sufficient to show merely that one could infer the existence of [serious misconduct] from the evidence. Rather it must be shown that it is more likely than not that [serious misconduct] existed.”

Silver King Communications--Albany, Inc., 6 FCC Rcd. 6905, 6909 (1911) (*Footnote omitted). Silver King states clearly the legal standard established by Commission and court precedent for revocation proceedings commenced under §312(a)(2) of the Communications Act, as was this proceeding. Therefore, any contention the Bureau may make for resolution of Issues 5-7 in its favor must be measured against this standard.

ISSUE 5: MAINTENANCE OF MAIN STUDIO FOR WJUX

2. Under this issue, it is to be determined whether MMBI “has violated and/or continues to violate §§73.1120 and 73.1125(a) and (c) of the FCC's rules with respect to the maintenance of a main studio for Station WJUX”

3. MMBI has, from commencement of operation to the time of the hearing, maintained its main studio in Ferndale, New York, collocated in a building housing and owned by the licensee of WVOS, Liberty, New York (“the Ferndale studio”). The Ferndale studio is within the principal community (70 dBu) contour of WJUX. Thus, unless it has been established by the Bureau that the WJUX facilities and staff at the Ferndale studio do not